documents in this case, together with the evidence of Liew Thin Cheong (2 D.W.) and Cheng Ah Keat (3 D.W.) create in my mind a preponderance of evidence despite the paucity of evidence concerning the alleged outward trip from Kuala Lumpur on the 18th of April, 1949.

I have grave doubts as to innocence of the accused, but my duty is to ensure that no person whose guilt is not established is convicted. I must therefore allow this appeal. The conviction, confiscation and fine are set aside, and in place thereof a finding of not guilty is to be recorded.

Appeal Allowed.

K. PRITAM SINGH v. K. V. THAVER.

[Orig. Motion (Spenser Wilkinson, J.) July 11, 1949]

[Kuala Lumpur — Originating Motion No. 11 of 1949]

Registration of Businesses Ordinance, 1947, S. 9(1) — Claim for relief from disability arising from non-registration — Civil Procedure Code, S. 579 — Courts Ordinance, S. 56.

This was an application by Originating Motion for relief under Section 9 (1) of the Registration of Businesses Ordinance, 1947, against the disability imposed by the section in respect of a moneylending business carried on by Pritam Singh under the name and style of K. Pritam Singh. The business was not registered under the Ordinance and a claim of the Plaintiff for money lent had been dismissed by the learned Sessions Judge in Kuala Lumpur on that ground. The Plaintiff did not appeal against that decision but claimed relief under S. 9 (1) of the Registration of Businesses Ordinance and also asked that the Judgment of the learned Sessions Judge be set aside.

Held, (1) that the Court had no jurisdiction to grant the relief asked for in the particular application before it; and (2) that in the circumstances of the case there were no sufficient grounds for the exercise of the Court's discretion in favour of the Plaintiff.

Cases referred to :—

(1) *In re Shaer* (1927) 1 Ch. 355.

(2) *G. and C. Kreglinger v. New Patagonia Meat and Cold Storage Company Limited* (1914) A.C. 25 p. 40.

ORIGINATING MOTION.

Ng Kok Thoy for the Plaintiff.

M. Edgar for the Defendants.

Spenser-Wilkinson, J. : — This was an application by way of an originating motion by one Pritam Singh (hereinafter referred to as "the plaintiff") for relief under the proviso to section 9(1) of the Registration of Businesses Ordinance, 1947, against the disability imposed by this section in respect of a business carried on by him under the name and style of K. Pritam Singh.

The Order applied for in the motion paper reads as follows :—

i. That general relief against the disability imposed by section 9 (1) of the Registration of Businesses Ordinance, 1947, be granted to the Applicant on such conditions as to costs and service and publication of notice of this application as the Court may be pleased to order.

ii. That the Order of the Learned Session Judge in Kuala Lumpur Sessions Court Civil Suit No. 10/49 be set aside.

iii. That the said Kuala Lumpur Sessions Court Civil Suit No. 10 of 1949 be further heard and considered on its merits.

iv. That such other relief be granted as to Court seems just.

The application arises out of a civil suit commenced by Pritam Singh in the Sessions Court, Kuala Lumpur in which he claimed the sum of $547.20 being the principal and interest due on a promissory note for $480.00 signed by the defendant in his favour. In the written statement by the respondent who was defendant in that suit he raised the question of registration by the plaintiff of his business and when the suit came on for hearing before the President he dismissed the plaintiff's claim at the close of the plaintiff's case on the ground that the plaintiff was carrying on a business of money-lending which should have been registered by reason of the fact that the business name adopted was the plaintiff's own name preceded by the initial "K" being that of his father Kashir Singh.

The plaintiff is not appealing against the judgment of the President, though I understand that an appeal was filed and was subsequently withdrawn. However this may be, the judgment of the President is not before me on appeal; and in view of the provisions of section 56 of the Courts Ordinance I am of opinion that it cannot be before me by way of revision at the instance of the plaintiff. The section reads as follows :—

> Where an appeal lies from any decision in any civil matter, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of a party who could have appealed.

I, therefore, have no jurisdiction to grant branches (ii) and (iii) of the order asked for on this motion, and that part of the plaintiff's application must, therefore, fail.

The first part of the application asks for general relief, but there was no evidence before me of any contracts other than the one sued on in the Sessions Court in respect of which relief is required, and Mr. Ng Kok Thoy agreed that his application was in effect for relief in respect of this particular contract. In

regard to this branch of the application two questions arise. The first is whether I have jurisdiction on this application to grant the relief asked for; and the second is wheher, if I have jurisdiction, this is a case in which it would be proper for relief to be granted.

On the question of jurisdiction the plaintiff relied principally on the case of *In re Shaer*[1]. The headnote of this case reads as follows:—

> Under s. 8 sub-s.1, of the Registration of Business Names Act, 1916, the Court has power to grant relief from the disability attaching to a contract, through failure of the plaintiff to register under the act, in all proceedings on the contract not only up to judgment but also after judgment has been signed; and the relief so granted is retrospective in effect so as to restore the contract ab initio to the category of contracts enforceable at law and validate all subsequent proceedings in respect of it.

Mr. Ng Kok Thoy relied upon this decision as authority for the proposition that relief can always be granted even after a judgment has been given. I think, however, that this view of the case is too wide and that the headnote accurately represents the result of the decision. The important words in that headnote are those I have underlined above, "in all proceedings on the contract". The motion before me is, in my opinion, not a proceeding on the contract at all — it is simply an application for relief. The proceedings on the contract ended with the judgment of the Sessions Court. They might have been continued by way of appeal, but that has not happened in this case. In my opinion the plaintiff's proper course in regard to the suit before the President was to apply, at the conclusion of the argument, for an adjournment to enable him to apply to the High Court for relief. Having failed to do this, and judgment having been entered against him it was still open to him, in my opinion, to appeal against that judgment and on that appeal to adopt the attitude that if the High Court were disposed to uphold the decision of the President against him then relief might be granted under the Ordinance. Such a course would have been in line with what actually happened in *Shaer's* case, where on appeal from the Master giving judgment under O. XIV, Fraser, J. upheld the judgment but also gave relief. The last paragraph of the judgment of Sargant L.J. in *Shaer's* case reads as follows:—

> In this case it is to be observed that at the time when Fraser J. granted relief, the judgment in which the Master had made an order was under appeal to Fraser J., so that the action was then before him, and simultaneously with granting relief under s. 8 against the disability, he also affirmed the judgment for payment made by the Master, and in those circumstances I doubt whether it is really a case of relief having been granted after judgment had been given.

It is important to observe the facts in *Shaer's* case, because the relief there granted, being in the very proceedings in which the contract had been in question, the difficult points that arise out of the present application did not have to be considered and were not, in fact, either argued or dealt with. It was there held that the effect of granting relief is to restore the validity of the claim ab initio. If that be so and if I granted relief in this application I should be altering the effect of a decision of the Sessions Court which has never been before me either on appeal or revision. Previous decisions should never be relied upon for more than they actually decide and it is the principle laid down that must be followed (*G. and C. Kreglinger v. New Patagonia Meat and Cold Storage Company Limited*[2]). The principle laid down in *Shaer's* case appears to me to be that so long as the proceedings in which the contract is in question continue the fact that a judgment has been given does not prevent the High Court from giving relief. Thus the High Court can uphold a decision against a plaintiff and simultaneously remove the effect of that decision by granting relief — but this must be done in the same proceedings.

Mr. Ng Kok Thoy was unable to cite any precedent where relief has been granted, after final judgment had been given in one set of proceedings, in an entirely separate proceeding. If the procedure adopted by the plaintiff in this case were to be permitted the effect, it seems to me, would be to allow an unsuccessful plaintiff to upset a final judgment long after the time for appeal has expired. There would be no time limit and a defendant who had successfully raised a defence under the Ordinance would never know when the decision in his favour had become final. There must, in my opinion, be some finality in judgments and the law prescribes the time within which appeals may be preferred and the procedure to be adopted for revision. The decision in *Shaer's* case (with which, with the greatest respect, I entirely agree) is not one which in my opinion should be extended so as to deprive a successful defendant of the protection of the judgment in his favour after the time for appealing has expired.

There is a further reason why, in my view, the relief must be granted in the original proceedings. I asked Mr. Ng Kok Thoy what steps he would take if I granted the relief he asked for. He suggested an Order setting aside the decision of the Sessions Court, or applying to that Court for review. I am quite clear that I would have no power to set aside the Order of the Sessions Court except upon appeal or upon a

revision which is not open to the plaintiff; and I think it would be very difficult for the plaintiff to bring himself within the provisions of section 579 of the Civil Procedure Code which provides for review. I am unable to see, therefore, how any practical effect could be given to an Order made by this Court on this motion giving the plaintiff relief, for whichever way he turns he is met by a judgment against him which he cannot get rid of. These difficulties, to my mind, explain the importance of the fact that in *Shaer's* case (which takes the matter further than any other decision) the relief was granted in the very proceeding in which the question arose.

For these reasons I was of opinion that I had no jurisdiction, in the particular application before me, to grant the relief asked for.

It is not strictly necessary, in view of my decision on the question of jurisdiction, to go into the merits of the application, but I think it desirable to express my views thereon. The grounds upon which relief can be granted are set out in the first paragraph of the proviso to section 9(1) of the Ordinance. The relevant part of that proviso reads as follows :—

> Such Court, on being satisfied that the default was accidental or due to inadvertence or to fraud on such person or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief . . . . .

Mr. Ng Kok Thoy on behalf of the appellant argued that the default in this case was due to inadvertence and also that it was just and equitable that relief should be granted.

The plaintiff has accepted the position that he has a registerable money-lending business because he has in fact registered it since the decision was given in the Sessions Court. I would observe, however, that although the written statement in the suit was filed on the 15th February and the decision of the learned President was given on the 14th March, 1949, the registration was not affected until the 20th April, 1949, and the present application was not made until the 7th June, 1949. The plaintiff cannot, therefore, be said to have been very diligent in seeking what is in effect an indulgence.

The plaintiff states in paragraph 7 of his affidavit that he has been known by the name of K. Pritam Singh for the last 15 years, and, although he nowhere specifically admits this in his affidavit, the inference is clear that he has, in fact, been carrying on business under that name for these 15 years.

The learned President having held that this business was registerable, it follows it has, in fact, been registerable since the year 1940 when the Registration of Businesses Enactment, 1939 was amended by the addition to paragraph (e) of section 3 of a proviso, which is word for word the same as the proviso to paragraph (e) of section 3 of the present Registration of Businesses Ordinance. The plaintiff is thus some 9 years out of time with his registration. It is true that no registrations were accepted during the period of the British Military Administration and for some time thereafter, but I do not think this materially affects the plaintiff's position in this case. The plaintiff is a person who, by virtue of his employment, is more likely to know of the necessity of registration than an ordinary business man whose knowledge of the law may be very limited. Moreover, being a a solicitor's clerk he had a very good motive for endeavouring to conceal, both from his employer and his clients, that he was carrying on a money-lending business. That this motive probably played some part in his failure to register is, to some extent, borne out by the fact that in the proceedings before the President he stated on oath (perhaps as an expression of opinion rather than of fact) that he was not a money-lender. I was far from satisfied that the failure to register was inadvertent.

It remains to be considered whether upon other grounds it was just and equitable to grant relief. The only matter which has caused me any hesitation on this point is the fact that in the written statement of defence in the lower Court the defendant admitted that he was indebted to the plaintiff in the sum of $216.00, and it might at first sight appear to be a hardship that the plaintiff should be precluded from recovering this sum of $216.00 admittedly due to him from the defendant. The law, however, lays it down quite clearly that no right in relation to an unregistered business shall be enforceable in any legal proceedings and even if the defendant had admitted the whole of the plaintiff's claim he would still not be entitled to recover unless relief were granted. The very result deliberately brought about by the provisions of the section can clearly be no ground for granting relief under the proviso. Mr. Edgar on behalf of the defendant also pointed out that the admission in the

written statement does not amount to an admission that $216.00 was due on the promissory note and it may well be (though, of course, I can express no opinion on the matter) that the plaintiff may have some separate cause of action against the defendant either by way of an account stated or otherwise.

The proviso to section 9(1) lays down that relief shall not be given in respect of any contract if any party to the contract proves to the satisfaction of the Court that if the Ordinance had been complied with he would not have entered into the contract. The defendant in his affidavit states that had he known that the plaintiff was a money-lender and had to comply with the provisions of the Ordinance he would not have entered into the contract with him. This statement falls a long way short of "satisfying" me that the defendant would not have entered into the contract if the Ordinance had been complied with — and it is only if I am satisfied that I am precluded from giving relief. But the defendant's affidavit together with the circumstances of the case raise at least a doubt in my mind as to whether the defendant would have entered into the contract had the Ordinance been complied with. The defendant is a teacher and, as such, whilst he might be prepared to borrow money from a friend who was a Solicitor's clerk he might well shrink from borrowing money from a person whom he knew to be registered as a money-lender. To the minds of some people there is a clear distinction between borrowing from a friend and being "in the hands of a money-lender". In view of the fact that the Ordinance prohibits relief where it is proved that the contract would not have been entered into I think the possibility that the contract might not have been entered into is a matter which should be taken into consideration in deciding whether or not it is just and equitable to grant relief.

In all the circumstances, therefore, I came to the conclusion that this was not a case in which I would have been prepared to exercise my discretion in favour of the plaintiff.

For the above reasons I dismissed the motion with costs.

Motion Dismissed.

SINGAPORE REPORTS.

TEO HEO HUAT v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) September 7, 1949]

[Singapore — Magistrate's Appeal No. 69 of 1949]

Opium and Chandu Proclamation — Possession of chandu — Sentence.

This was an appeal against sentence in a case of possession of chandu.

Held, that severe punishment under the Opium and Chandu Proclamation should, generally speaking, be reserved for traffickers and others who make a living rather than for the actual smoker.

MAGISTRATE'S APPEAL.

Appellant in person.

A. H. Simpson (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — This was the case of a chandu smoker. I consider that, generally speaking, severe punishment should be reserved for traffickers and others who make a living rather than for the actual smoker, who probably contracted the habit when it was quite legal. If it is possible prison sentences should be avoided, and, if resorted to, it should be with view to a possible cure. In the present case the appellant was sentenced to 9 months r.i. on one charge and to a fine of $100 or a further month r.i. on an additional charge relating to the possession of certain utensils.

I considered that the sentence was in the circumstances excessive and I reduced it. It should be noted that these offences are still dealt with under the Opium and Chandu Proclamation in which penalties authorised are grossly excessive, much more severe than those authorised under the Deleterious Drugs Ordinance which was intended to deal with the use of drugs much more obnoxious than chandu.

Sentence Reduced.

NAGAPPAN v. CHEN CHI YA.

[Court of Appeal (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) October 27, 1949]

[Singapore — Civil Appeal No. 14 of 1949]

Landlord and Tenant — Condition in tenancy agreement prohibiting assignment or sub-letting — Transfer of business.

In this case the premises belonging to the respondent were let to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord". Subsequently Singaraveloo transferred the business he carried on at the premises and left the premises. The appellant claimed the tenancy as a result of an agreement with Singaraveloo and one Pakirisamy. The learned trial Judge found that there was a prohibition against assignment or sub-letting and that there was no acquiescence to the transfer or sub-letting by the landlord. He held further that the tenancy of the premises was transferred to the appellant but held that the respondent was entitled to recover possession under the Control of Rent Ordinance, 1947.

The appellant appealed against this Order for possession.

Held, that the prohibition to assign was a condition of the tenancy agreement and the appellant could not therefore in the circumstances become the tenant of the respondent.

Cases referred to :—

(1) *Pollock v. Stacey* (1847) 9 Q.B. 1033.
(2) *Moore v. Greg* 2 P. 717.
(3) *Doe v. Watt* 8 B. & C. 308.
(4) *Commissioners of Works v. Hull* (1922) 1 K.B. 205.

COURT OF APPEAL.

K. E. W. Hatchard for the Appellant.

Mark Morrison for the Respondent.

The Court dismissed the appeal and stated that they would give their reasons later.

On 27th October, 1949 the reasons for the dismissal of the appeal were given by Evans, J., with which Murray-Aynsley, C.J. and Gordon-Smith, J. concurred.

Evans, J. : — On this appeal the court is asked to say that the learned judge in the court of first instance, having found for the defendant that he was a tenant to the plaintiff of certain premises at 1 Joo Chiat Road, went on wrongly to give the plaintiff possession of the premises for reasons based on the Control of Rent Ordinance 1947 which had neither been pleaded nor argued. The defendant appealed against this order for possession.

The respondent is the owner of these and other lands, the management of which is in the hands of his father. In November 1937 the premises were let on a monthly tenancy from 1st December 1937 to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord," and signed by the parties the landlord under the words "I confirm the above" and the tenant under the words "I agree to the above".